IMPRESSIONS OF AN AVERAGE JURYMAN

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IMPRESSIONS
of
AN AVERAGE JURYMAN

By
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(Average Juryman)

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FOREWORD

The working of a juryman's mind is the unknown quantity, the missing link, in the trial of legal cases. Lawyers may have access to magnificent libraries, may have legal and other experts available for consultation at all times, but they cannot have a knowledge of who is to make up a jury to pass upon the facts in a case, or how counsel's efforts are to be received by a jury. Long experience in jury cases may give an attorney some vague idea of what he may expect from the average jury, but each jury has individual characteristics and it is not possible to judge with even a fair degree of certainty how the cat is going to jump.

The writer has been serving as a juror in the New York civil and criminal courts for about eighteen years and has heard a wide variety of cases tried. It has always seemed to him that a picture of the average juryman, showing his weak points and his strong ones, his likes and dislikes, in short impressions of what goes on in court, would not only be interesting reading, but

would be valuable material for lawyers. With this in view he made it a practice to get acquainted with as many jurors as possible and to get their views.

Jury work is most fascinating to the student of humanity. The trials of the different cases show all of the various emotions, passions and vicissitudes of every day life—its tragedies and comedies. If all the world is a stage, the court room is the scene of many of its best productions. The attorneys and the witnesses are the actors and the judge and jury the critical audience.

The impressions given in this book are the impressions of the average of many hundreds of jurymen who have served at sessions with the writer. The scenes described are actual scenes in court and the stories told, with perhaps one exception, are descriptions of actual occurrences. A story is going the rounds of a fellow who became disgusted with the vote of the people upon a certain question and who said, "The trouble with people is that about sixty per cent of them are below the average." Most students of popular government, how-

ever, believe that the people do a pretty good job. Juries as a whole bring in fair verdicts and weigh evidence in an intelligent way. It is true that many juries do not measure up to the average intelligence of all of the people. This is not the fault of the multitude, but of the better educated and better fitted class who are unwilling to make the sacrifices involved in this great and necessary civic duty and obtain exemption—in many instances through unholy methods.

Men on duty in a jury box and the same men in a jury retiring room, with their chairs tilted back and their feet on the table, and freed from the scrutiny of the public and the formalities of the court room, have two distinct personalities. The writer hopes to give a picture of the juryman under both conditions that will make the people, particularly the lawyers, better acquainted with him. The jury is just Tom, Dick and Harry; human, filled with sympathy and anxious to do the right thing in a great majority of cases. Better work could be had from juries if their work was surrounded with more dignity, and in the

New York courts, at least, if they were afforded the ordinary comforts of life, while they are on duty.

JURY MATERIAL

An encyclopedia gives the following definition of a jury:

"Twelve impartial men, legally competent to act, who, under the sanction of their oaths, determine by their unanimous verdict the innocence or guilt of the accused in a criminal trial or decide the issues of fact which are contested between the plaintiff and defendant in a civil trial."

Theoretically correct, no doubt, but some of the men serving on juries would hardly be classed by qualified judges as either impartial or competent, if those judges could have an opportunity to hear what goes on in the rooms set aside for their deliberations. A better description might be, "A lot of men picked from the poll lists, who have not enough political pull to get off, or who are out of a job and want to pick up three dollars a day."

Juries, such as they are, are composed of average men; average in intelligence, ability and education. The sheep are mixed with the goats. Some juries measure up to a higher standard than others, but gen-

erally they make a fair average of citizenship, a sufficient number of higher class men being on hand to balance the low grade material. The men with the stronger minds and personalities have more than a proportionate influence, and because of this, fair verdicts are usually obtained. The man with experience in analyzing situations and bringing out strong points will be powerful in lifting the cloud from the mind of his befogged brother and leading him to a logical conclusion.

Juries are largely made up of middle class merchants, manufacturers, brokers, salesmen and the like. The per diem man, if he makes over three dollars a day, evidently has little difficulty in getting off. Captains of Industry, and some other classes who are not exempted by law, may receive summonses, but they are as rare in a jury box as a Dodo bird.

Getting men off from jury duty is one of the most valuable perquisites of the small politician. As a vote getter exemption from jury service has a high value and is a bait that is freely offered to men who would strike from the shoulder if a bribe

of another kind were offered. The writer once voted at a primary election that was close, and voting involved a trip uptown in the middle of a business day. On leaving the polling place a stranger introduced himself as the district captain and asked if he could do any little thing in the way of jury duty exemption. Such action degrades juries and to that extent is a menace to proper verdicts.

The wise have a whole bag of tricks to be used for getting excused from jury service. One man used to put his hand behind his ear and say "Beg pardon?" several times. Another, whose name was the same as his father, would have the old gentleman appear in court. He was eighty years old and as deaf as a post.

Retired business men make fine jurors. They do not have to worry about punching the time clock or whether some important letter will get off in time. They have during their business career had all the excitement one man is entitled to and do not get fussed over matters before a jury that often makes one who has half of his mind in the jury room and the other half on his

job get up and yell. The retired business man commands respect and attention and he can be counted upon to inject into the situation some of that good old horse-sense that has made him successful in the business world.

The "professional" juryman is generally poor material. He is usually some seedy individual who has lost his hold on things and cannot get a job and the three dollars he picks up in court is just that much more than nothing in his pocket. He never tries to get excused, but is "Johnny on the spot" when his name is called. He may take no interest in the proceedings, and may be a little hard of hearing, but he will be agreeable to anything and everything that goes on and will finally vote with the ones who are in the majority, in the hope that he may soon get through and get on another case, where he will receive twenty-five or fifty cents in addition to his three dollars.

Few grossly ignorant men get on juries. One case developed a regular male "Mrs. Malaprop," who persisted all day in talking about "statuary rape." He had prob-

ably never heard the word "statutory." If he had, he certainly did not know what it meant. If it had not been for time lost and a disagreement, for which he was more or less responsible, he would have been pure comedy.

SELECTING A JURY

Jurors spend much time in court with a string tied to them, but with nothing to do. One of their time-killing games is for two or three to get together and make bets as to which of the men called for examination will be excluded. It is surprising how many times you can hit it and yet physiognomy is most misleading. The man who looks like a crank of the first water or a chronic hold-out, often turns out to be sane, level-headed and possessed of a keen mind and valuable in the retiring room in threshing out disputed points.

The layman at times finds it difficult to understand just the system used by the attorneys in picking their juries. Clean-cut, high-grade men of responsibility in the business world will be turned down and some whose faces are their misfortune selected. Some cases of dismissal are so mysterious that the jurors get the impression that the attorneys are looking for "easy marks" to put something over.

An electrical engineer was called in one of the Parts for examination as to his qual-

ifications. He was highly educated, and his business for years had been the analysis of conditions and the finding of facts. "Just the right man for the job," I think I hear you say. Just right by training, temperament and experience. And he was unquestionably honest and readily stated that he had no prejudices and would bring in a verdict in accordance with the facts. But he was rejected. The attorney was one of high standing and with long expeperience. The only possible excuse for rejecting this man was that he worked for one of the big corporations. But he had had nothing to do with policies or administration. At any rate, excusing him from the case left a bad impression upon the people in the court room; it looked like a clear case of "jockeying" to color the jury.

It is generally believed that many of the attorneys try to give juries complexions that seem to them favorable to their issues. One man prefers to have a preponderance of those of Jewish faith; another, perhaps, wants as many Catholics as possible. Or perhaps it is a case of getting more old men or more young men. Most of the

judges, however, are quick to resent any such coloration and a sharp rebuke brings the proceeding to a close.

Toward the end of the term there is always less material to choose from, owing to the number of men who have been excused during the term, and excluding what appears to be "fair" material becomes dangerous. It may be a case of "Out of the frying pan and into the fire." One appearing not over clever may be excused only to be replaced with a tartar when the available material has been exhausted.

The different methods used by attorneys in selecting jurymen are interesting in their contrast. One man finds it necessary to find out all about a juryman from the time of his advent into this cold world up to the moment of his appearance in the court room. He wants to know if he has ever known any one connected with the case, their sisters, cousins and their aunts, and their business associates unto the third and fourth generation. Some of the lawyers seem to regard a juryman as especially unfitted if by experience he knows anything whatever about the matters about to come

up in the trial. Other attorneys, after asking the usual formal questions, depend largely upon their ability to "size up" an individual. One of the greatest lawyers known by the writer believed it damaged his case more to excuse any man not actually known to be unfit than to have some doubtful ones on his juries. He believed they were all good gambles unless there was some very strong reason to believe the contrary.

THE JURYMEN SWEAR

You remember perhaps the figure in the old-fashion square dance where a lot of people join hands in the middle and circle around. That is what swearing in a jury in the New York criminal courts looks like. In the civil courts it has not even as much dignity as that. The court clerk shouts: "The jurors will rise to be sworn. Hold up your right hands." Then he talks off something at the rate of about three hundred words a minute, and says: "Be seated." One old gentleman in the criminal courts always wound up with: "SO HELP YOUR GOD!" And in the weeks that the writer served in his Part no one apparently ever thought it a joke or invited attention to the fact that the oath in that form put the responsibility upon the Deity rather than upon the individual.

An Oath of Office for jurors is either a solemn, binding obligation or it is a dangerous procedure and a mask for the dishonest. If it is the former it has a very high value; otherwise it might well be omitted. The little weight given by jurors to

their oath is one of the shocking things encountered in the service. To many it is something to be lightly considered and has little or no influence in their voting.

The method of swearing in jurors no doubt has much to do with the lack of respect for the oath. Instead of a serio-comedy, this ceremony might well be attended by great dignity. It might be administered by the judge, after he had invited attention to its language and the responsibility for the pledge given. Every juror should have called to his attention the fact that the oath is taken literally and that failure to observe it is detrimental to justice and a violation of a sacred promise.

Jurors are commonly met who do not consider their oath either a moral or legal obligation, but a mere matter of form. One man went so far as to remark to his neighbor, in a statutory case, that when the law governing the case was made, the Legislature had had its turn; the lawyers were about to have theirs, but it was up to the jury to consider the matter *"in a common sense way."* It is easy to imagine how little respect for evidence a man would

have if he had no respect for his own oath. If he was so thick skinned as to have no compunction about violating his own promise, how could he be expected to believe the witnesses were not telling any story that would best serve their purposes?

Sometimes the lawyers impress upon jurors the obligation of their oath, but in many instances no such attempt is made. In a criminal case upon which the writer had the misfortune to be a juror, several of the jurors said in the jury retiring room that they would not convict even if they had seen the act committed and notwithstanding the law in the case. Some of them were so prompt in their indorsement of the defendant that one could only judge that they were "birds of a feather." If the District Attorney had been on his job in this particular case, and it was a case where he should have looked for just such a contingency, he would have discovered that he had some "sea lawyers" on his jury and got rid of them instead of having a second disagreement, when the evidence in the case was clear cut and where the judge's charge had been so clear

that there was no misunderstanding as to the law.

Let us either not swear at all, or do it right.

WHY IS A LAWYER'S OPENING ADDRESS?

Some of our most brilliant sayings are those we leave unsaid. There are places where oratory is greatly appreciated, but a lawyer's opening address is not one of them. One of the attorneys—with a smile on his face if he knows his business—bows to the jury and proceeds to explain how utterly absurd it is for his opponent to present the other side of the case. He states in detail his program for the presentation of facts that will convince any one but a deaf man or an idiot that his case is a "cinch." The opposing counsel perhaps—more particularly if he is new at the game—files a lot of objections to remarks.

Then lawyer number two has a turn. After smiling in a "You know me, old man," kind of way, he tells the jury his opponent has been indulging in pure verbiage; that when he gets through with his evidence, a four-year-old child will be able to see how utterly fallacious are the claims of the other side. Then he goes into the merits of his own case in more or less detail. When he refers to his opponent's re-

marks or his opponent's case, lawyer number one jumps up and shouts an objection. All the time a lot of witnesses have been waiting for hours, perhaps days, for an opportunity to tell the story itself. Probably the judge will instruct the jury not to pay attention to anything that the lawyers have said in their opening addresses, but to base their conclusions exclusively upon the evidence. And the people in the court room ask themselves, "Why is a lawyer's opening address?"

If all this oratory is without value—why is it? If a salesman comes into your office with something he wants to put over, and he talks to you for half an hour on what he is going to show you, you naturally think it strange that he doesn't show it first and talk about it after. And you will probably think that he must have a phony proposition or he would let his article talk more or less for itself.

What can be gained by making a lot of statements that cannot be proven? It is hard to believe that the lawyers themselves believe that they can prove some of their preliminary statements. Some one is tak-

ing it for granted that there are some lightweights on the jury who will fall for things that he does not himself believe.

Juries may have one or two members who are not leaders of thought, but the number of actual "bone-heads" is small, and to bring up in the opening address a lot of points that are not substantiated in the evidence, is quite liable to have a detrimental effect. Unfulfilled promises seldom create admiration. A point made in the opening and not touched upon in the testimony suggests a second consideration of a weak piece of evidence, that might well have been left unborn.

Some of the judges, in instructing juries in regard to disputes in the opening, assume an attitude of "Don't mind them, they are only boys who have pieces to speak and must get them off their chests; after they have finished, the real fire-works will begin."

If we must have opening addresses to connect up the evidence that is to follow, let us have them in brief form and have them confined to a description of goods that can actually be delivered.

WITNESS THE WITNESS

"Go courting in your every-day clothes," attributed to Henry Ward Beecher, was not intended to apply to witnesses, but lawyers might well have those seven words printed in large type for those who are about to testify before a jury. They might also well be elaborated by, "Don't put on airs in court or try to 'con' the jurymen."

Honesty makes the big hit with the jurymen and the witness who tries anything artificial is only fooling himself. It takes a great actor to successfully tell a lie in court when he is cross-examined by a lawyer who is awake, and it takes a genius to act a lie and get away with it. Most witnesses are poor liars and worse actors. Too good a story is worse than a point for the other fellow; it's a discredited witness. A colored woman came into court one day who made everybody sit up and take notice. She was accompanied by two youngsters, and all three were heavily draped with crepe. As a sideshow she was a success, but as a picture of a bereaved widow she would never have been allowed in the movies.

A truck skidded into a fat woman over on the east side, turning her topsy-turvey and causing great excitement in the neighborhood. The lawyer for the defendant had the case well in hand until the chauffeur got the idea that it was up to him to individually win the case for his employer. He painted a picture of himself that endowed him with the skill of an Oldfield and the watchfulness of a mother hen. As a picture of the chauffeur we all have to dodge to get across the street, however, he would not pass muster and the jury gave him the benefit of the doubt and put him down as a first-class liar. And his boss had to pay substantial damages.

A "painted lady" may tell the truth, but juries are liable to apply the principle of "False in one thing, false in all things" to her. They say to themselves if her complexion is false and she has colored her hair, she will probably color her testimony. Two girls were witnesses in a criminal case that smelled to heaven. Each had a record that made the jurymen blush. Any fine feelings possessed by them must have been born on the witness-stand. And yet

each of them repeatedly fainted while giving testimony, and the case had to be held up while restoratives were administered. The jury could not believe that two such hardened young sinners could be so easily shocked, and their performance was put down as acting, badly advised.

The "boomerang" witness is always interesting. It is great sport to see one who is being heckled take the bit in his teeth and run away with the show. A contractor sued the City of New York for moneys alleged to be due him for work upon one of the docks, and the City called as a witness an employee who gave certain testimony as to the records in the case. He was a red-headed Irishman, with simple manners, and told his story in a straight-forward way. The attorney for the plaintiff either forgot the witness' nationality or got a wrong impression from his apparent docility, for he asked his assistant in a voice that could be heard by the jury, "Does he know anything?" When the answer "No" came along, he said, "I'll show him up." He did; he showed him to be a witness of the first water. He knew docks from

Mount Ararat to Liverpool and Chelsea and all kinds from those you get for being late on your job to the ones for a 40,000 ton liner. That showing up brought in a prompt verdict for the defendant.

Another case of rushing in where a wiser attorney would have feared to tread was the one of a widow suing the City for injuries received through stepping into a hole in a sidewalk. It developed that the hole in the walk had to be at least eight inches deep before it constituted negligence. The plaintiff put on a witness of unimpressive appearance, but who seemed mighty sure of himself. On cross-examination heckling and sarcasm had little effect upon him; he stuck to his estimate of the depth of that hole as though he had measured it, which was not a fact for it had been filled immediately after the accident. The plaintiff's attorney, who had evidently been unaware that he had an expert witness, on redirect examination brought out that he was a compositor in a printing establishment and that his profession developed great accuracy in measuring short distances. Upon testing him with a pocket rule he showed

that he could pick out from an inch to eight inches to a hair.

The life of the expert witness while in court is not a happy one. Doctor Gotrich is put upon the stand and questioned as to his education and experience. He tells of enough degrees that have been conferred upon him to cover the walls of his office with nicely framed parchments. He knows bones from the one in the middle ear to the one that is a small unit of his charge for services. He testifies that he has treated just such injuries as the one described in court so many times that it would take an adding machine to count them. But he has qualified as an expert and even though he may be the pet specialist of John D. Astorbilt, the opposing counsel finds it necessary to try to show that he is unworthy of belief; that his judgment on the minor injury in question and its effect is so poor that he wouldn't have him for a sick cat. Other experts are called and testify that the first said "Tweedle-dee" when he should have said "Tweedledum." But if he is a real "big-gun," the jurymen know it, and treat his story accordingly.

You who have not served on juries will never know the strain upon a jury that has to sit for several days listening to stupid witnesses who cannot speak English. The interpreter seems to find it necessary to enter into a long discussion every time he asks a simple question, and the answer is then often unintelligible. The man who has heard such testimony for three or four days will at the end of that time have a mental picture of the case that resembled an old-fashion crazy quilt.

EXAMINATIONS—CROSS AND OTHERWISE

Possibly the reader has been in court when the testimony of a witness has been interlarded with a whole series of objections and overrulings. The case was perhaps too small to be worthy of an appeal, and finally the judge made the final objection that stopped the performance. Jurors soon learn that it is necessary for the judge to exclude irrelevant or improper testimony, but some of the attorneys give the impression that they are afraid to let a witness tell his story in his own way, and that impression may be more damaging to a case than the testimony could possibly have been. It requires nice judgment to know just where this bad impression outweighs unfavorable testimony. A jury may be expected to reason that an attorney with a good case will not waste time with unimportant points.

The value of getting a witness to contradict himself depends largely upon whether the jury gets the impression that the witness is honest but confused. Many of the

jurors have at some time or other been on the witness-stand and have recollections of having been heckled and perhaps abused by some bulldozer, and any unfair treatment of the man in the witness-chair will be sure to have its reaction. For instance, some of the lawyers invariably ask, "Have you talked with any one about this case?" Only a "boob" would permit his witness to go on the stand without finding out what he is going to testify and every one who thinks about such matters knows it, and yet the person on the stand is questioned at length about it and, if possible, made to appear as if he had committed some great impropriety. But, bless your heart, the jury understands it all, and if the witness is at all honest in his manner, no matter how confused he may be, they will give him a fair deal.

The suave, business-like, courteous attorney is the one who makes the big hit with the jurors and whose work carries weight with them in the retiring room. Put such a lawyer on a case in opposition to a bulldozer and he starts with his case half won. A case in the Supreme Court presented a

fine battle between quality and quantity in court room tactics. On one side was an undersized fellow with a calm demeanor and a middle-keyed voice. He was a veritable artist along his special line, never showing the slightest excitement, but just pegging away until he reached his mark. The opponent was a big, thick-necked man, with a roar like a bull and the manners of a truck driver. The attacks of the smaller one were like those of a gnat; he would sting, sting, sting until his opponent roared in anger and danced in anguish. Based upon the impression made upon the jury, the big man never had a look-in. Every witness he cross-examined started out with the sympathy of the men in the jury box and his angry rejoiners to the attacks of his opponent won only the smiles of those in court.

Sarcasm is always a dangerous weapon, and it is the chasm into which many an attorney falls in his examinations. A prominent engineer had been called as an expert witness and had made a fine impression with his testimony. His preliminary examination showed him to be a man of

the highest standing in his profession, that of mechanical engineer. Cross-examination failed to rattle him or to wring from him an admission that he had said anything that was either misleading or untrue, by inference or as it sounded. Like a thunder clap, the opposing attorney shouted, *"You get paid for coming here, don't you?"* and the jury smiled in anticipation of a clever rejoinder, for he had shown himself to be as sharp witted as he was expert in a professional way. Those on the jury long remembered the grin on his face when he replied: "You lawyers are the only ones who work for nothing."

It is difficult for the jurymen sometimes to understand why testimony is not further developed. It sometimes seems to stop just before it hits anything. One witness testified that he was thrown over the back of a dump car when it struck a bumper at the bottom of an incline. The opposing lawyer failed to bring out that he would have been catapulted forward. Another witness testified that an accident was due to a broken tooth in a cog wheel, when as a matter of fact, it could have been

easily shown that with a wheel of the diameter given, even if the tooth had been broken, there would have been no slip, as other teeth would have held.

SOME SUMMING UPS

A lawyer's opening address is properly a short talk to arouse interest in a selling proposition, the evidence is the sample and the summing up a final effort to close the sale. A favorable verdict may be likened to the signature on the order blank. The best points have been touched upon, and the sample is shown, calling attention to all of its best points and hurrying by its weaknesses, and then comes the time where you must clinch the whole performance and show how much better it is than the other fellow's goods.

What salesman would think of yelling at a merchant if he had something to sell him, unless perhaps the man was deaf? Imagine trying to nail down an order by walking up and down in front of a prospect and shouting at the top of your lungs. The buyer would either think you were crazy or that you thought he was. Some of the lawyers act as if the men in the jury box had been brought up in convents or had been inmates of the Home for the Feeble Minded. The male crane and some

other birds do a weird dance when they want to impress the ladies of their affections, and go through some other strange antics, and a juror is led at times to believe that some of the lawyers have read about it and are trying the same scheme. They amble up and down, wave their arms, tear their hair or mop their brows and call upon high heaven to witness that they have the only just cause. And the jurymen laugh up their sleeves and say to themselves, "Rot."

A case had arrived at the summing up stage in the City court. The court room was full of jurors who were not working upon a case and with nothing to do but wait until the judge might have pity upon them and excuse them. The attorneys for both sides in the case being tried were large men and possessed of gymnastic ability. It had been a fairly short trial and the evidence seemed to the unoccupied jurors to be conclusive. Two or three of the idle jurors got their heads together and agreed among themselves to render a little verdict of their own, based upon the efforts of the attorney who yelled the

loudest. The first one, although he stood almost in bodily contact with the front row of jurors, started in with a mighty volume of sound, but this was nothing to what he accomplished when he warmed up to his work. He pleaded, he cajoled, he threatened, until finally, after half an hour of vocal pyrotechnics, he sank exhausted in a chair. "Wonderful!" said the idle jurors, "How can you beat him?" It certainly seemed impossible for any one to reach a higher peak of verbosity.

But a surprise was in store for them. The first man had been the personification of noisiness, but to the second he was as a subway train compared to Niagara; a flat wheel car compared to a 16-inch gun. He raged and he stormed, he shouted and he bellowed, and he swore by all that was good and holy that he had offered the only evidence that was worthy of consideration on the part of any one who had reached maturity. The man who had a moment before looked like a champion was simply nowhere and the idle jurors awarded the latter their unanimous verdict. But the jurors actually sitting on the case, and

who were not trying the case on the noise issue, gave the other fellow their vote.

The summing up of another attorney in rather an important case in the Supreme Court was in marked contrast, the above rough and tumble performance. This case had consumed several days and a large amount of testimony had been offered. The tired jurors sat back, expecting a long talk, when they were surprised to hear:

"Gentlemen, you have heard the testimony. Nothing that I can say would add to it. I believe you are intelligent men and all I ask of you is that you will use your brains. Good morning."

The jury took a short smoke and brought in a verdict in his favor.

CHARGING THE JURY

Some of the jurors go into the retiring room only half charged, and they fizzle out in a few moments like an exhausted siphon. And yet an agreement or disagreement often depends upon a clearly understood interpretation of the law in the case. Many jurors have about as adequate an idea of "preponderance of evidence" and "reasonable doubt" as a small boy has of moral turpitude. All of the judges in their charge instruct juries as to these two vital points, but many of the definitions are only language. Other judges can make their interpretations so clear that an average stenographer could take them down and correctly transcribe her notes.

Why would it not be a good idea to have definitions of "preponderance of evidence" and "reasonable doubt" given in *standard* language, selected by a committee of able lawyers and written to be digested by the average business man? After a while, at least, jurymen would have an understanding of them, like the prayers in a prayer book. They could then be printed

in bold type, framed and hung up in jury rooms, where they could be readily referred to when some befuddled juror is off the track. Time and again, after hours of deliberation, when a disagreement seems inevitable, it is found that the trouble is that one or two men have no real idea of what "contributory negligence," "reasonable doubt" and "preponderance of evidence" mean. Perhaps there will be some one on the jury who can bring out the point that the plaintiff is not without fault or that the case has not been proven beyond any question whatever, and lo and behold! the light is seen.

The judges have a diversity of methods in charging juries. Some go into the facts as well as the law. Others stick more closely to the law. Some judges dwell so pointedly upon the facts in a case that only a juror mentally blind could fail to see the points in His Honor's mind, and an easy way out of it is to agree with the judge. One judge perhaps chews his words or is minus in impressiveness or is thinking of the coming election. Another has himself followed the evidence and has a mental

picture of just what the jury should have to keep it within the confines of its functions, and at the same time walk straight within those boundaries.

Some jurors are in their own minds natural exponents of the law, others believe in the law only when it does not conflict with their personal ideas. It is of great importance that one and all of them should have clearly implanted in his mind just where the dividing line between judges and jurors runs. Some jurors are weighed down with assumed responsibilities, such as responsibilities for the punishment of an offender in a criminal case. Many a disagreement has been the result of unwillingness on the part of some one or two jurors to be responsible for sending a man to prison or to the death penalty. Perhaps a few words, explaining that such responsibility is entirely upon His Honor, and that even the responsibility for awarding monetary damages should not worry a juryman because the judge can set aside the verdict if it is an incorrect one, will clear up the situation.

Most lay minds require very judicious

and careful instruction in jury trials, otherwise some individual may stand up in the retiring room and give a fine illustration of what the judge did not say, or at least what he certainly did not mean.

VERDICTS

We often have things handed to us that we are not particularly anxious to possess, but after we have been told that they are ours, we won't give them up without a fight. Jurors are told by the judges that the right to pass upon the facts in legal cases is theirs exclusively and they are jealous of this function. The judge instructs the jury that deciding the truth or falsity of the facts as shown in the evidence is something outside of his own jurisdiction, but in some cases he has a string tied to it. He says, "Little jurors, here is something that the people have given to you; it is all yours; take it and use it as you please." And when they use their authority, as little Willie does the dollar sent him by Aunt Arabella, the fatherly judge gives the jurors a verbal spanking for not using it with better sense.

Most of the judges will accept jury findings as final, unless there is something very "raw." In only a very small percentage of cases does His Honor set aside the findings. In the eighteen years that

the writer has served, no judge has set aside a verdict of any jury of which he has been a member and in only one or two cases tried in court rooms where he has been have judges made comments reflecting upon the intelligence of the jury in bringing in its verdict. Jurors held in court but not actually working on a case will at times disagree with the findings of the working jurors, but the judge himself usually lets the verdict go without criticism. In one or two cases, after the verdict has been announced, the judge has reviewed some of the evidence with the jurors, but has always decided that there was some foundation for their decision.

Within the last few months a case has attracted much attention. The judge scolded the jurors for their verdict and made uncomplimentary remarks which were reported in the daily papers. One of the jurors, in turn, came back with some caustic remarks about judges who try to control jury verdicts. The whole thing, however, soon blew over, and apparently the old spirit of co-operation has been re-established.

Improper verdicts are due to one of two things, or both, viz: poor material on the jury and weak instruction from the judge. As a remedy, a restriction of the exempt list has been suggested. Such a restriction would go a long way in curing the trouble. As indicated in another chapter, the available jury material is restricted by the practice of the court clerks of manipulating the jurors' cards so that the men may serve more or less in rotation. It is most desirable that the maximum of service shall be had from the best of the material available.

In the minds of jurors verdicts are sometimes brought in, in spite of an attorney's efforts, rather than because of them. Many a conviction in a criminal case is voted with an expression of regret that the defendant was so poorly defended. The jurymen cannot be blamed for this when the judge himself at times, in their presence, expresses the same sentiment. In one case on which the writer was a juror, the judge expressed the opinion in open court that the plaintiff should get a competent lawyer.

The question of whether majority votes of juries should not supersede unanimous verdicts has been widely discussed. Any man who has sat a few hours on a hopelessly split jury will be in favor of almost anything that will make for a remedy. One or two men whose unfamiliarity with humanity generally is marked and who know even less about business matters, will stand out for hours and sometimes be so wrapped in admiration of their own superior minds that they will cause a disagreement. They are unwilling to acknowledge that the agreement of ten or eleven of their brethren is any basis for changing their vote. In such cases, a ten to two control, for instance, would greatly help business. A generally applied majority vote, however, would be a dangerous experiment. Where the death penalty applies, or a considerable amount of money is involved, a unanimous verdict seems necessary. If you can get twelve average men to vote unanimously that a thing is proven beyond a reasonable doubt, supported by a preponderance of evidence, you can feel pretty sure that the verdict is a just one. The

people are entitled to this supreme test before they are sentenced to death or to pay heavy monetary damages.

Compromise verdicts have been condemned, but seem to be a necessary evil. Without them the courts would be clogged with retrial cases. The compromise affords a sop to the egotistical person who would not otherwise come to an agreement. Accident cases predominate in the New York courts. Mary Jones starts to get into a street car. The car starts before she is in, and she is thrown, breaking her leg. She says the conductor gave the signal to start before she got on the platform, and sues for $10,000, as she will be permanently lame. The company says its employee is the most careful of conductors; but that Mary wore a three-inch heel on her shoe which caught on the top step. A dozen witnesses may be called to show expense involved in her recovery, value of loss of time, a monetary equivalent of her sufferings, loss of earning power, etc. And then there are a lot of witnesses to contradict the first lot. The jury talk it over; all finally agree that Mary should have dam-

ages for her injury, but they have some doubt as to the permanency of her injuries and as to her sufferings, etc. One man says, "I'll not give her a cent or I'll give her the whole amount," and things look promising for a new trial.

On every jury there are usually one or two who know the cash value of services and who know how to equate other things into money. They know that $10,000 is absurd in this case and suggest that some one get a pencil and do a little figuring. They put down the doctor's bills, Mary's wages for the time involved, and the other items and offer them as an argument. Pretty soon the $10,000 juror comes down to $5,000 and some fellow who has been sticking out for $500 comes up to $1,000 and there they stick. Finally, when both see that the other will not give in, they get together in a spirit of conciliation, and each agrees to partly give in if the other will and Mary gets $2,500, which probably is about what she should have. Some of the judges have declared against compromise cases. An indorsement of this practice would lead to its abuse, but it is more

or less of a common practice and one that goes a long way in coming to agreements, particularly in suits for small amounts.

Another kind of a verdict which is less legitimate is that of averaging. The only possible justification for such a verdict is to get a verdict where an agreement otherwise is utterly hopeless and where a retrial would cost more than the amount involved. The jury seems wide apart in its ideas and unable to come to an agreement. If not too far apart, the amount of damages thought just by each juror is put down, the total obtained and divided by twelve.

Take it all in all, jury verdicts are fair. The situations in the moving pictures where the hero is convicted contrary to all evidence, and where the counsel is nothing short of an ass, is a travesty of jury trials. The scenario writers should serve on the jury and learn something at least approximating the true situation.

IN A JURY RETIRING ROOM

Have you ever been near a menagerie when something has happened to excite the animals? If so, you heard a heterogeneous volume of sound made up of everything from the roar of the lion and the grunt of the hippo to the squeal of the guinea pigs. That is about what you would hear if you stood outside of a jury room while they are deliberating, for they deliberate out loud—with the accent on the loud. And if there is not a foreman present who can control excited men, they act pretty much as do the inhabitants of the menagerie. All twelve try to talk at once and sometimes eleven of them will try to drive home an argument, at the same time, with an obstinate twelfth. Acrimonious conversation, to be polite in my description, is common, and even a fistic encounter is promised. Remarks of a personal nature pass freely and one standing within hearing, and not familiar with jury room performances would think that a general rough and tumble fight was under way.

But, bless your heart, that is only their

way of arriving at a verdict. Animal activities soon wear themselves out. The lion and the lamb lie down together; offensive remarks are forgotten; the punches fall short; and they file into the court room with their verdict, in perfect harmony. Perhaps the judge compliments them upon their expertness in handling the business in hand.

In New York, twelve men are crowded into a jury retiring room, with just space enough for them to sit around a large table. Other than the table and twelve chairs, the room is bare, shabby and dirty. It seldom has more than one window, and as there are usually one or two old gentlemen who have been brought up with the idea that fresh air is harmful, the window is kept shut, or nearly so. Then every one lights up and every one damns the quarters. No writing paper is provided, and if anything is needed for the work, some one raps on the door and a court attendant appears and produces.

The door of the jury room is locked on the outside, presumably with the knowledge that things often get so bad in that

room that some one would run away if he could and upset the proceedings. The jurors feel like a lot of bad little boys locked up until they have done their lessons. No wonder they get irritable. In one case after the jurors had been locked up all night, it was reported that one man had said that he would vote any old way to get loose; that the sin was on the heads of those responsible for such quarters.

The Socialist is a hard man to handle in a jury room. He has perhaps been looking for just such a chance to show his contempt for the law as it is. He is like the Long Island politician who believed in Civil Service examinations—easy ones for his friends and hard ones for his enemies. Employers and big business are his enemies and the employed his hobby. In the jury box he was meekness personified, but when he gets behind closed doors, he is against the rich and the interests once and for all. But he comes around in the end, because he is generally a theorist and after he has been tied up for a few hours, personal comfort takes paramount importance. Then some one tips the court peo-

ple that he is a bad actor, and one day his name disappears from the jury list.

The supersympathetic person makes a poor juryman. He wants to help the unfortunate in spite of the law. Where a poor man sues a rich corporation, even though injuries may have been largely due to his own carelessness, he always votes to "give him something." After he has been shown that his attitude is profitless, he will come around and vote with the majority.

The deaf man is often met in the jury room. He is too sensitive to ask to be excused because of his infirmity, but goes into the jury room with only a hazy idea of what has been said. He is surprised to learn what a lot of evidence escaped him, but will take the word of others that it got in and votes accordingly.

The man of low intelligence bobs up once in a while and makes a nuisance of himself. Generally, however, things are over his head and he will be led in the proper direction by the superior minds present. Sometimes men of this grade are sufficiently intelligent to know what they do not know.

The self-sufficient fellow soon is noted. He announces positively that his mind is made up and that he will not argue with any one. He perhaps edges into a corner and snubs any one who tries to win him over. If the foreman is a wise one, he will have been sizing up the jury with a view of getting just the right man to approach Mr. Self Sufficiency in a diplomatic way. The one selected will start talking to him about his game of golf or how nice it is to meet men possessed of great minds, and soon the reserve is broken down and the hold-out will be convinced that there is another side to the question.

Some men hold out through pure stubbornness. Some square-jawed chap will hold out against the other eleven. Says he won't change his mind if they lock him up in the jury room for a year. Knows all the fine points in the case and his mind is made up, but a deadlock of three or four hours will make him more receptive. A case tried in the city court involved only a few hundred dollars. The evidence was largely contradictory. The first vote was nine to three, the second eleven to one, and

there it stuck for three solid hours. The hold-out would not only not vote with the majority, but he made sarcastic remarks about the two who had so quickly deserted him. Dinner hour passed and one man who had a dinner engagement with his best girl suggested that there was one man in the room who needed his head punched. The stubborn one finally voted with the eleven, but he had a mighty slow mind and a mighty stubborn disposition.

HIS HONOR

Judicial temperament would be a difficult thing to understand if its definition were based upon a composite picture of the judges in the New York civil and criminal courts. Judge X may be a learned, even-tempered, dignified man, discreet in the use of language and always in complete control of what is going on when he is present. He not only demands respect for his high office, but warrants it. And every one knows it and acts accordingly. His mind is on his work all of the time; he follows the evidence, and if an attorney tries to slip something over, is prompt to realize the situation.

Judge Y, on the other hand, may be a politician-judge, with visitors whispering in his ear during the proceedings and distracting his attention. In case of a dispute, he has to have the stenographer's minutes read before he can make a ruling. One New York judge was frequently afflicted with sleepiness during the sessions. It seemed to be "the morning after the night before" with him. His eyelids would

close, his head drop forward and the jury would speculate upon whether or not they were to have an "upright" judge presiding, or one under the influence of something other than the evidence.

The attorneys evidently know just how far they can safely go with the different judges. With some, latitude is as far-reaching as that of a meridian. While working with a judge who gives his whole attention to the trial, jurors undoubtedly do their best work. They cannot fail to be influenced by the attitude of His Honor. Some of the judges take pains to have the evidence presented so that the jury may have a fair opportunity to get the pertinent facts; others give the impression of merely trying to get the evidence upon the record, and there is a decided difference in the results obtained by these two methods.

Some of the judges take pains to impress upon the jurors that their job is an important one and a word to the jury now and then during the proceedings has the effect of holding their attention and perhaps of directing attention to important points as they come out in the evidence. When

passing upon disputed points of law during a trial some of the judges explain to the jury, even although the question is entirely one of law and therefore not within the scope of the jury's functions.

Some of the judges go much further than others in developing the testimony, to give the jurors every opportunity to get the testimony so that they can understand it. It is a great comfort for jurors to feel that they are working with His Honor and that he is working with them. In too many cases are the jurors allowed to feel that they are simply a necessary evil existing because of a law of doubtful value. So much has been printed about the adequacy of the present jury system that jurors are beginning to feel that they occupy a ridiculous position—one in which they serve against their will only to be regarded as a substitute for a better system.

In rare instances His Honor shows such an irritable disposition that it seems a good truck driver has been spoiled to make a poor judge. In one case the court room atmosphere was highly charged. Every one was on edge, for no one knew who

would get it next. The court room attendants walked on tiptoes; the clerks held their respective breaths and the attorneys who were unfortuate enough to have cases on trial in that Part, kept themselves under a double wrap. The jurors were scolded and the poor wretch who came up for sentence was given to understand that he ought to be ashamed for having lived. The jurors were glad that they were not attorneys where they had to take such withering comment without being able to "sass" back.

THE FOREMAN OF THE JURY

Let the attorneys serve on one or two jury cases and they will give much more attention to the man who occupies No. 1 in the box. Oftentimes he means order or chaos, thoroughness or hit and miss in bringing out the essential facts. It is often rather amazing what poor material is accepted for No. 1—particularly in civil suits. The foreman, if competent, has much to do with proper or improper verdicts. Often the first statement of a foreman is that he knows nothing about presiding and would prefer that some one else should take his place. The working of a body without a head of course follows.

A weak foreman means long drawn out arguments and a lot of wrangling. The person generally inoffensive and meek is liable to be demonstrative in a jury room and one who needs repressing. The ignoramus shows up with his poor logic and needs leading. Perhaps the anarchist develops and needs to be shot. A competent foreman recognizes them all and by showing that he is boss of the situation

and intends to run things in an orderly way, will get concerted action and good results.

Most juries start their proceedings in the retiring room by taking a vote for the plaintiff or defendant, with the idea of first finding out what is in their respective minds. One foreman who happened to be vice-president of a large manufacturing concern, had an idea that many jurors were reluctant to change their vote after going on record; that long drawn out arguments and even disagreements resulted from this reluctance. He felt that a few secret ballots would permit men who were not altogether sure of their position to get a better line on the situation without embarrassment. The proposition to take secret ballots was put before the jury and while at first there was considerable opposition, it was finally agreed to, and a verdict reached in a reasonable time without the bitterness that is so common in jury deliberations.

A foreman who was a natural leader, with long business experience and who was a man of large affairs, showed his value in a criminal case that at the time of its

trial received columns of space in the daily papers.

A little Italian woman had been tried for murder in the first degree. She had been married to a human brute and her whole married life, it was shown in the evidence, had been but a hell on earth. Her husband had tortured her with fiendish ingenuity and then one day, unable to longer bear her humility and suffering, she repelled his attack with a pistol-shot that snuffed out his miserable life—and made it necessary to place her on trial for murder. The proceedings dragged along for days. She heard the sordid tale of her life, with all of its horrible details, rehearsed, until it seemed her mind could no longer stand the strain. The soul-trying cross-examination had been finished, the District Attorney had condemned her action, as the law required him to do, the judge had charged the jury and it had filed out with solemn faces, leaving in her mind a terrible uncertainty as to what further punishment life had in store for her.

The twelve men were locked in the jury room, and true to form, some one said,

"Let's smoke." But the foreman was filled with humanity, and, with the sorrowing face of the defendant in his mind, replied: "Wait a minute, gentlemen. There's a little woman downstairs who is awaiting with a lot of anxiety to hear from us. Perhaps she won't have to wait long. Let's vote first and smoke afterwards. Perhaps it will taste better."

And in ten minutes that poor, abused little woman smiled, perhaps for the first time in years. For she had been found *"Not Guilty"* in the hearts of those men and in the eyes of the law.

EVADING JURY DUTY

The large number of men of affairs who do not serve on juries is impressive. Occasionally a man of prominence appears to answer a jury summons, but this is so uncommon as to excite comment. A prominent jurist has said that next to the duty of a soldier fighting for his country, the most important duty of a citizen is to perform the functions of a juryman. Yet the top-notchers are conspicuous by their absence. In the criminal courts a juror is fighting the enemies of law and order; in the civil courts he is fighting for justice, good government and a proper application of the law.

The busy man argues that his prominence in the business world and the many calls upon his time constitute a good reason why he should be excused from jury duty. As a matter of fact, the very conditions that he cites are the best reasons why he should serve. Successful men, with broad business experience, are badly needed. These men express an interest in the work, acknowledge its importance and express

regret that the pressure of business interferes with their acting, but if in some litigation of their own an apparent or claimed miscarriage of justice occurs, they shout to heaven in condemnation of juries and the jury system. They and their kind are the greatest single obstacle to success of the system. It makes a great difference whose ox is gored. They will not give their own time, but when a case is on trial in which they have a personal interest, they demand that it be tried before men who are competent to digest evidence in complex cases.

Mr. Merchant sits in his office wondering how in the world he is going to meet all of his business and social engagements. Every moment for the next sixty days seemed assigned to something that cannot be postponed. He has trips to make, buyers to see, repairs to be arranged and friend wife has him booked up for week ends. He is about to give it up in despair, when the office boy announces that a man outside wishes to see him. Pretty soon a neat little slip is in his hand, notifying him to appear in Part XXX of the Supreme Court one week from the following Mon-

day. It seems like the "last straw" and he damns the whole jury system. Maybe he can get excused? But he has no political pull and the unsuccessful efforts of two years ago come to his mind. Monday rolls around and he rushes to court in desperation. He tries to enlist the clerk to help him get off, but is told to appeal to the judge, and finally the clerk announces that the judge will hear all those who have *legal* excuses. He sees His Honor meet similar requests with a stony glare, talking with those on the long line one after another, while they tell of pressing business. Then his turn arrives and the judge informs him that *no business excuses will be accepted.* There is a shortage of jurors and he is needed. So he realizes that he is in for two weeks of discomfort and close confinement. If he had been summoned to the criminal courts, it would have been four or five weeks.

But Mr. Merchant recollects that the cloud has its silver lining; that in the times that he has served he met some good fellows and learned some business tricks of value; that he had the chance of his life to

study character and personality. He resolves that he will make the best of the situation, cancel his social engagements, and work evenings if necessary in an attempt to keep things moving.

TRIALS AND TRIBULATIONS OF A JURYMAN

The court rooms of the New York civil courts have been a scandal for years, and one of the great wrongs in them is the lack of provision for the decent housing of jurymen. When the ancient buildings were designed, the architects must have had a grudge against jurors, for the only space provided solely for jurymen is the retiring room. The judge is provided with a seat upon a dais, with draperies and other surroundings, at least in a measure appropriate to his office. One would logically suppose the jury would be provided with comfortable chairs in the court room, reserved for their use, and where they might spend their unemployed hours. Perhaps from fifty to one hundred business men are tied up in a court room every business day, not employed upon any case, but compelled to wait until excused by the judge. The least that should be done for them is to insure them a place to sit down where they can hear what is going on. They are entitled to whatever little entertain-

ment the court proceedings may give. But a juryman has but little standing and often times no sitting in court rooms. If he is lucky he may find a vacant chair; if not, he will have to spend his time upon a hard wooden settee, where he will mix with Tom, Dick or Harry, who may or may not have good reasons for being there, and whose ideas about fastidiousness oftentimes forbid being chosen as a close companion for several hours.

It is an old story, the one of the big dog with the small kennel, where he had to back in because there was not room enough inside to turn around. Multiply that by twelve and you have a jury retiring room. It suggests the thought that it was made that way so that the jurors would want to get through as soon as possible and accordingly speed up verdicts.

The lack of personal comfort and of lack of dignity in the treatment of jurors has its reaction upon verdicts, and more directly upon the class of men who are willing to serve upon juries. Most men, when they have been through it once will shy across the street at a jury notice. The

court rooms with their faulty ventilation, or lack of ventilation, are very bad, but the retiring rooms are a veritable "chamber of horrors." The greatest brain in the world would fail to function 100% if it was confined to some of our court rooms a few days and then subjected to the smoke cure of a retiring room, with twelve men smoking everything from a jimmy pipe to a bad cigarette, and the door and window closed. Make the juror's job a real one and give him quarters that the job warrants and there will be a marked improvement in the material available for trying our cases.

Men who are serving on our juries are practically unanimous, in the belief that jurors are not receiving fair treatment and that the work is something to be evaded if it can possibly be arranged. It is about as agreeable to most of them as an ulcerated tooth, not necessarily alarming, but inconvenient and uncomfortable.

COURT CLERKS AND OTHERS IN AUTHORITY

Court clerks in their dealings with jurors range from pompous to chatty. If in the former class, they treat jurors as if they were a great nuisance, but something that has to be tolerated. Some of them surround themselves with an air of official grandeur that is spectacular, to say the least. One old tyrant placed himself upon such a high plane of importance that mere man approached him with fear and trembling. Woe to the one not familiar with court customs, he was sure to be squelched in no gentle way.

A juror sitting on a case in one Part of the Supreme Court was subpœnaed as a witness in another Part and not being twins could not see just how it could be done. Clerk No. 1, on being asked for advice, said, "Go in and see the judge in Part Y, and ask him what you shall do." Into Part Y went the unsuspecting juror, only to run into a tartar. When the case was explained to him, he yelled "Go and

sit down." "But," timidly replied the juror, "I am at work on a jury in Part X." "Go and sit down" came in louder tones, and the juror did, unable to decide whether it were better to default as a witness or a juror. Fortunately the judge came in in time to explain matters and later the rudeness of his clerk was described to him in a letter. The juror has reason to believe that that man had a much better idea of his own job and to what others are entitled in the way of courtesy after the judge talked with him.

The work of such a clerk has its direct effect upon juries. Any man who had been subjected to his bulldozing tactics would have had a dread of serving upon a jury where he would of necessity have come in contact with such a clerk. But the clerk was not altogether responsible; he had seen juries neglected and snubbed for so many years that he had acquired the habit of doing likewise.

In most of the courts the clerks are courteous and helpful. If they do not take jurymen seriously, at least they treat them as if they are human and entitled to what little

comfort can be afforded. In return for courtesies on the part of the clerks, some of the jurors divide their fees with them. This is not an altogether commendable practice; the only real harm, however, that results from it is the cheapening of the clerk's position. A man who will accept a few dollars collected by him to pay jury fees, can not be classed as either one of high ideals or of great self-respect.

In one of the criminal courts a few years ago, an attendant had the job of calling off the records of those before the bar for sentence. His enunciation was none too good, because of a generous supply of loose chewing in his capacious jowl, but he was great on punctuation. He always had a cuspidor handy and would proceed along the following lines: "John Smith (and a mouthful of juice would be shot into the waiting receptacle); age twenty-five, born in America (bull's-eye No. 2); first offense (ditto);" and so on through the examination. The writer watched him, fascinated. He never made a poor shot. Many stories have been written of champion long-distance spitters, but

this man could give them all a handicap and beat them hands down.

The manipulation of the names that go into the wheel used in drawing jurors is of questionable propriety and legality. When a jury has finished its work on a case, the names of those jurors are manipulated so that they will not be again drawn from the wheel until other jurors who have not worked so recently have been given work. While this practice is undoubtedly done without evil intent, it makes jury fixing a possibility and prevents selections from all of the available jurors all of the time. It prevents the maximum use of the best material on a panel and makes for cliques and combinations in jury deliberations. Through this practice jurors serve in more or less fixed groups.

DELAYS, LINGERS AND WAITS IN COURT

To a man called away from his busy office and with a thousand and one things on his mind that need his attention, the waste of time in court is something shocking. His mental condition magnifies it a hundred fold and comparison with his own hustling methods adds another hundred. It seems to him that business in court is just one unnecessary delay after another. When a man is actually working on a case he is at least using his time for some worthy purpose, but while he is hanging around waiting for action, "Time is money" is blazed upon his brain.

For every man who is busy in court there are dozens who are detained there just killing time. The court never seems entirely ready to go into action. Calling the calendar, talking over some hangover of a previous trial, or something else, nearly always comes up to delay the case on trial. Some relief has been obtained by having the calendars all called in one court and the cases for trial distributed from

there. It seems to jurors that much of the preliminary work might be done before the jurors are required to be present. Jurors must appear not later than ten o'clock in the morning, and oftentimes it is well after eleven before they do any real work. It is generally eleven-thirty before the judge can see his way clear to excuse the idle men for the morning, and in the afternoon it is the same process, the men being compelled to loaf around until it is too late to do anything with their own business affairs.

If these delays were altogether unavoidable they would be philosophically accepted, but the fact is that the jurors who serve with Judge J are excused much earlier when they are not working on a case than do the ones in Judge K's court and they otherwise have more free time. The former manages his court to much better advantage so far as time is concerned, and Judge J's court is a favorite one with jurors.

In one term of two weeks in the city court, the entire panel was idle during practically all of the time. Session after

session the clerk reported no cases ready for trial. The jurymen were compelled to report twice each day and what they said about that court from a business standpoint could hardly be called "judicial" language. Some of the jurors are taxpayers and delays to them mean dollars and cents in taxes, for which the people get nothing. One judge in the criminal courts when there was a tendency to waste time would flash upon the multitude the fact that his court cost the people $1,000 a day and that he would tolerate no waste of time at that cost.

Needless repetitions in bringing out evidence waste much time. If His Honor has his mind on the job, he will save hours in a fairly long case. With a lax judge, there are endless bickerings and the whole proceeding is slowed down. Counsel does not hesitate to be a half hour late in court and His Honor himself, perhaps, gets in late in the morning.

In addition to the actual money loss, the waste of time in courts has a direct effect upon the reluctance of busy men to serve. A man who might be willing to make the

sacrifice if he is to do real constructive work, cannot see it if he is to give a considerable part of his time to loafing around with nothing to do. Restrict the exemption lists, make the juryman's job one of dignity, make him comfortable, and keep him busy, or let him go to his place of business when he is not working, and a much higher grade of jury work will result.

THE FAIR SEX ON THE JURY

Our mothers' ideas of what was proper for a "perfect lady" and the ideas of the women of the present time are miles apart. Mother used to say that no lady would be seen in public sitting with her legs crossed, and that any girl who smoked a cigarette was dangerous society for Rebecca. Now good form permits a much greater diversity in how a young woman may display her underpinning and if a fellow finds his cigarette case empty, he borrows from friend wife, as a matter of course.

But are we ready for mixed juries? President Roosevelt once said, when a woman insisted in breaking into the proceedings of a gathering of men: "Women, once our superiors; now our equals." It is hard for a man who has served on juries of the old kind, but not on mixed juries, to understand what kind of a performance a mixed jury would put up. Not that the woman is not perfectly capable, but we can't see just how she can mix with that miscellaneous assortment that we have served with, in the consideration of the

grossness and filth that comes before a jury, particularly in the criminal courts.

Women know women better than men do, but most of them are as ignorant of the conditions and influences that surround the life of a man as a wooden Indian. We just cannot picture refined women sitting in the company of men of assorted degrees of refinement and arguing with them the debasing material that has to be gone over. When a fellow thinks of his mother listening to the evidence of some of the cases that are tried it seems simply an impossibility and a bad dream.

We are willing to concede that women are competent in every way, mentally and physically, to be jurors; some women much better jurors than the average man; but most of us feel that she is too fine for jury work, unless it were confined to women's cases and with juries made up wholly of women.

The presence of women in the jury deliberating rooms it seems would interfere with the free discussion of evidence, and it is entirely possible that some of the male jurors would not have their minds on their

work. Men generally smoke when they think deeply. About the first thing done in a jury retiring room when the twelve convene is to light up. The surroundings of the room are unsanitary and depressing. About the only cheerful thing is a smoke and the friendly offer of a cigar or a cigarette will often go a long way to getting two minds with two different thoughts in harmony. When we have the ladies on the jury, shall the men give up their smokes or shall the women join the party?

The writer has talked with a lot of intelligent women regarding a murder case where a young woman died amidst surroundings attended by gross immorality, and where a disagreement of a mixed jury was caused by failure of one or two women to vote with a strong majority. The ladies consulted were interested in public affairs and appeared to be excellent jury material excepting for two things: they had an abnormal amount of sympathy; in short, the sympathy one expects to find in a normal woman, and they were more concerned about punishing the defendant for his alleged improprieties than they were

about whether or not he should be legally convicted of murder in the first degree.

An uncompromising attitude is a most undesirable element on a jury. Most women are too good for the work—too womanly. For which we may be thankful. The day may come when all women are only "our equals," but here's hoping it may be distant.

WEIGHING HARD AND COLD FACTS

The writer has an obsession. He has tried to reason it out with himself—to convict himself of a mental weakness, but he has never been able to make himself believe that any man with a normal brain should not be able to fairly pass upon the merits of a case basing his conclusions upon the evidence alone, without any regard to what has happened to him or any one else before that time or to happen thereafter. This must be an obsession, for ninety-nine men out of every hundred are haunted by a belief that it is not possible for them to pass upon facts without taking into consideration what happened to them within the past forty years, if they have lived that long, or to Aunt Maria or Cousin Will's second wife.

To have become acquainted with any one in any way connected with the case on trial, either directly or indirectly, even unto the third and fourth generation, is fatal to the equanimity of most of the jury material—so much so that the writer has been led at times to believe that such ex-

quisite sensibilities were closely related to a desire to escape serving on some particular case.

In one case the writer had to acknowledge that some years before he had a job where there were relations with the law department of a street railway company. Many attorneys would have challenged forthwith, but the one on this particular case decided that knowing someone who worked for the Street Railway Company ten years before did not constitute disability to think. In another case, after the jury had been agreed to by a subordinate of a law firm, who should appear as the trial lawyer but an old schoolmate. He would have passed unknown but for his unusual name. As the last contact with him had been about twenty-five years theretofore, the writer, after debating with himself, decided it was not worth while to claim acquaintance and muss things up in court.

There is without doubt a real inability on the part of a large number of people to divorce their minds from their own affairs and from irrelevant things in weighing

evidence. This is one of the striking things in court that shows itself to a man serving for the first time. It crops out in the examination of jurors and in the jury room. In some cases it is probably imaginary; in others, it is purely a dodge to get excused. The finding of the line where it is safer to take a chance on prejudice than to take a chance on getting other material whose weaknesses are more hazardous to a case, is one of the matters that test the skill of the attorney. The judge of personality will win out in the contest.

SOME SPECIMEN VERDICTS

In the absence of instructions, juries at times make their own law in reaching verdicts. This was the case in a suit brought by a young working woman who was in the habit of taking a train to her place of business at the Fifty-ninth Street station of the elevated road. At the time of day she went to work, the cars were always filled when they arrived at her station, and it was almost always impossible to get within the body of the car. One morning, while riding on a platform, the train took the Fifty-third Street curve at a little more than the ordinary speed throwing several other persons against her, forcing her off her balance and causing one of her feet to slip between the bumpers where it was injured so as to lay her up for two or three weeks, with incidental loss of pay and expense. The jury gave her a verdict on the ground that when the company permitted her to ride on the platform without protest they became a party to the violation of the rules and became responsible for the safety of the peo-

ple who were carried there and were negligent in not providing devices to prevent the accident that happened.

The owners of an automobile sued an insurance company for the amount of a policy issued by it upon a car that was burned up while on the public highway. The policy had been issued upon the application of an agency telephoned to the insurers and payment was refused because the car was a second-hand one, a fact which had not been stated in the application. While all of the facts brought out gave the appearance of an old car well insured, there was no evidence whatever of arson. The jury, in the absence of any instructions to the contrary, brought in a verdict for the defendant on the ground that in taking an application by telephone and failing to use even ordinary precaution in verifying the facts the insurance company should pay the policy. The insurance company had urged the agency to send it business and was apparently so desirous of getting new business that it was willing to insure anybody or everybody without any effort to investigate the facts. The writer

understands that the law has decided that an agency is the agent of the insured and not the insurance company, but the jury had no such instructions and held the insurance company morally liable for its own neglect and believed that the insured was entitled to the amount for which he sued.

How a jury at times fails to be impressed with a judge's charge is illustrated in a landlord and tenant case in one of the courts. The landlord, a saloonkeeper, had begun dispossess proceedings against his tenant, a lunch-counter man, on the ground that the latter had defaulted on three months' rent. The tenant demanded a jury trial, during which it developed that during the first of the three months in question the two principals in the affair had indulged in a rough and tumble fight. The saloonkeeper had been haled to court, where he was released on a suspended sentence.

During the dispossess case testimony was introduced regarding this fight, but it was promptly ruled out and later the judge instructed the jury that they should exclude it from the evidence in their delib-

erations. The lunch man testified that he had regularly paid his rent but could produce no receipts or other evidences of payment. As there was no evidence whatever of the payments, which were denied by the landlord, it seemed a clear case of a verdict for the saloonkeeper, but the jury brought in one for the lunch man. Later, in the corridors, several of the jurymen stated that their verdict had been based upon the belief that any saloonkeeper who had had a physical encounter with a defaulting tenant the first month of his default would throw him out that month and not allow him to go for three months before dispossessing him.

THE SUIT THAT DIDN'T FIT— ONE ON THE LAWYERS

The jury had been selected, after the usual examinations, for a damage case in the Supreme Court; the attorneys for both sides had made their appeals for justice at the hands of the jury and several witnesses had described at length the scene of the accident. The court room was filled with the usual number of witnesses, many of whom had spent days awaiting the trial of the case. The plaintiff was on the stand. She had described her fall because of a hole in the pavement, her injuries because of the defendant's alleged negligence, her monetary losses and her sufferings temporary and permanent, when a photograph was produced and she was asked to show just where the alleged hole was located.

She took the picture in her hands and examined it closely and in detail. She hesitated and embarrassment took possession of the witness and the court. No hole could be found. She stammered and her counsel rushed to her assistance but no hole could be shown. The court room was hushed and

the jurymen turned to each other with a look of "What next?" on their countenances. The location shown in the photograph checked with the one in the pleadings and both attorneys appeared to be stunned at this discrepancy at a vital point in the case. "What streets are those in the picture?" finally asked the witness, and when the information was forthcoming she remarked, "No wonder I couldn't find the hole, it didn't occur there at all."

The plaintiff's case had been prepared for the wrong street; all the pleadings and moving papers had described a hole that didn't exist, and the defendant's case had been based on the fact that the hole didn't exist. It was probably the surest defense ever presented in court. So they talked it over with the judge, who happened to have a sense of humor, a juror was withdrawn and a mistrial was declared in the suit that didn't fit. "Try all over again," said His Honor, "and see if you two lawyers cannot set your stage for the right place."

MATHEMATICS APPLIED TO EVIDENCE

In the case of the Wisconsin lumberjack the application of the "Theory of Probabilities" had much to do with the rendering of a verdict of guilty in the second trial, the first jury having disagreed. A Swiss lumberman had worked for many years in the woods of the Northwest and had saved enough of his earnings to visit his home. He was a huge fellow, rawboned and rugged but with honesty written all over him; also gullibility. He had purchased a ticket for France and having time on his hands was strolling about the big city to see something of its attractions before sailing. The "powers that prey" had, however, selected him as promising material and when he had reached Seventh Avenue and Twenty-seventh Street he was approached by a courteous person who asked, "Parlez vous Francais?" Delighted at the sound of his mother tongue he responded, "Oui," whereupon his new friend suggested that they take a walk together and see the sights, which proved agreeable.

It afterwards developed that the stranger was one of a team of well-known confidence men and that two Central Office detectives had spotted them. The detectives had also noticed a third party, stationed diagonally across the street, and who seemed much interested in what was going on. The lumberman and his new friend walked up Seventh Avenue and about a block north were accosted by a third person who inquired if he had heard them speaking in French. Upon being assured that it was so, he expressed his delight and said it would warm his heart if he might be allowed to walk with them and converse in his own dear language. The three then went north to Thirty-third Street, then east to Broadway, up Broadway to Thirty-fourth Street, over Thirty-fourth Street to Fifth Avenue and so zigzagged until a small park at Seventy-eighth Street and First Avenue was reached. In the meantime the man across the street had followed, keeping his distance; and, trailing the whole party, the two Central Office men.

The testimony showed that soon after

they had met the two Frenchmen had informed their new friend that each of them was worried over having in his possession a considerable sum of money; it also developed, most wonderfully, that all of them were to sail on the same boat for France, or that was their story. As the Swiss was much the oldest man, it would be a fine thing if he would care for their money, and under pressure he agreed to accept the trust and knotted handkerchiefs, each said to contain several thousand dollars, were handed over to him.

By the time the park was reached all were in a confidential mood. The Swiss was asked how he protected his own money and he replied that he carried it in his inside waistcoat pocket. They suggested that he let them show how it could be done in a safer way and when he had handed over his money, a roll of newspaper with a ten dollar bill on the outside and dyed green on the edges was deftly substituted and tied up in his handkerchief. The time seemed ripe for the detectives and they arrested the two Frenchmen and also the man who had followed diagonally across

the street, and it was the man across the street who was on trial as an accomplice.

The only direct evidence against the accomplice was the fact that one of the crooks had excused himself and had gone into a corner saloon at a time that the one on trial had entered that place and the two had been seen in conversation. The two Frenchmen, caught red handed, pleaded guilty, but testified that they did not know the third party. The case seemed in a fair way for a second disagreement when one of the jurors suggested the Theory of Probabilities, arguing that it was altogether improbable that three men would meet at an obscure point by chance and go by a circuitous route by chance to an unimportant point. A conviction resulted.

After the jury had been discharged the territory covered by the journey was mapped by one of the jurors and an engineer asked to figure the number of possible ways to travel from one of the points to the other, all equal in distance and all equally reasonable, and the application of a well-known formula showed that there were over nineteen thousand ways they

might have gone, each varying from the other more or less. That is, they might have gone up one block, over two, then up one and over three and so on; or say up two blocks, over one, up two and so on. Taking into consideration other factors commonly used by engineers for determining the probabilities of such matters, it was easy to show that the chances were several million to one that the thing did not happen by chance.

THE JURY'S REVENGE

Back in the eighties the main streets of New York displayed on either side tall lines of poles carrying telephone, telegraph and electric light wires. The wiremen had to do much climbing within the city in those days and because of the great height of the cross-arms, the density of the wires and the proximity of high and low potential currents, their work was hazardous and productive of accidents that are now less frequently reported. The functions and vagaries of the electric current were known to a far smaller proportion of the people than now and an electrician was looked upon as more or less of a wizard.

Small wonder was it, therefore, when a climber was killed by coming in contact with a high potential current upon a telephone pole, that the coroner should be stumped for material from which to select a jury who could pass intelligently upon the technical questions involved. But he was struck with a brilliant idea; the telephone company, whose service even at

that day had become vital to the city's business, had expert electricians; why not make up a jury from those intelligent and well trained young men?

Today, when men called for jury duty are cross-examined at length regarding their business to ascertain if they have acquaintance with any one directly or indirectly interested in the case at issue, it sounds strange to hear of picking a jury of employees of one of the parties directly concerned, but that is just what the coroner did. He summoned the electrician of the local telephone company and asked him to bring up to the court room twelve men from his office who were trained in the mysteries of electricity and who would therefore be qualified to give fair and learned judgment in the case in question, in which liability for the accident was to be fixed.

When the electrician of the telephone company appeared in court with his flock but nine noses could be counted, which, however, was entirely satisfactory to the coroner and the case proceeded with nine tried and true citizens on the jury, all em-

ployees of one of the parties in interest. The electric light company, being the purveyor of the high potential current, was naturally the party most concerned in the verdict and its principal witness, the superintendent, took the stand with an apparent determination that no testimony should be wrung from him that would be detrimental to his employer. He had not been advised of the fact that the jury was made up of nine practical electricians and when any of the jurors sought to question him upon technical points he resented the questions as an intrusion of a layman upon his field.

The testimony developed that there had been an element of carelessness on the part of the deceased, thereby releasing the electric light company from responsibility, but that jury of electricians decided that the superintendent should be taught a lesson and a plot along this line was hatched. When the jury went to its room for deliberation, it was agreed between the members that while a verdict favorable to the electric light company must be found, the superintendent should not learn of that

verdict until he had paid a proper penalty for his impertinence. Cigars were smuggled into the retiring room and, after the real business had been finished, an hour or two was spent in smokes and swapping stories.

At favorable moments formal requests were made for information from the superintendent; various technical questions, his full name and address, the corporate title of his company, etc. When it was believed that this procedure had extended a sufficient length of time, the jury solemnly filed in and announced its verdict favorable to the electric light company. But the superintendent had been in an agony of suspense, the perspiration was running down his pale face and, a picture of woe, he seemed on the verge of collapse, believing that he personally was to be held responsible for the death of the lineman.

Whether or not the superintendent ever found out that the jury in the case was made up of employees of the telephone company has not been told.

THE AMBULANCE CHASERS' SYNDICATE

In the case of Rebekka Polduski versus The John H. Collins Co. suit for $10,000 damages for accident caused by defendant's automobile truck colliding with plaintiff's husband's push cart and injuring the plaintiff.

Solomon Polduski, husband of Rebekka, on the witness stand. Jacob Abrams, attorney for the plaintiff.

Q. Tell the jury, Mr. Polduski, what you know about the accident to your wife here.

A. I was in mine house, right by der push cart, gedding dinner. Pretty soon a man, Mr. Marx here, came running into mine place and says, "Your wife is injured." Rebekka was down by der push cart selling der chrockery ven I was gedding my dinner.

Q. What did Mr. Marx say to you?

A. He said, "Shall I ged you a doktor?"

Q. What did you say?

A. I say, "My wife, Rebekka, she is hurt; yes ged me der doktor."

Q. Did the doctor come?

A. Yes. Doktor Mayer.

Q. What did you do when he went for the doctor?

A. I wendt down der stairs. Two men were carrying up Rebekka; she was much hurt.

Q. What happened then?

A. They took her up and put her on der bed. She was much hurt. She stayed on der bed one, two weeks. The doktor called many times.

Q. Could she do her housework?

A. No, she was much hurt on der leg. I had to care for her. I lose much business.

CROSS-EXAMINATION

Q. Did you know Mr. Marx before the accident?

A. No, sir.

Q. And Dr. Mayer; you say Mr. Marx fetched him?

A. Yes, sir.

Q. Your attorney, Mr. Abrams, did Mr. Marx also fetch him to you?

A. Yes, sir. He say he is good lawyer.

Testimony of Solomon Marx, witness for defendant:

Q. Mr. Marx, did you see the accident?

A. No, sir. I hear some one had been hurt and ran to the place.

Q. What did you do then?

A. I hear some one say a lady had been injured, and her husband was up in the house. I ran up the stairs and told him his wife had been hurt.

Q. Then what did you do?

A. I got the names of witnesses.

Q. Did you know the Polduskis before the accident?

A. No, sir.

Q. Then why did you show such an interest in the case, getting a doctor, witnesses, etc?

A. A poor lady had been hurt.

And so the story came out. The ambulance-chasers' syndicate had been on the job. The case had been scented out by the scout Marx, who provided the lawsuit, the testifying doctor, the handy witnesses, and he no doubt had an undertaker handy

should one be needed. These hounds are well organized and the courts of New York are overflowing with suits due to their operations. An accident to them is like manna from heaven. A verdict of a few hundred dollars is a godsend; for the people pay the expense.

UNDESIRABLE PUBLICITY

In one of the municipal courts Cohen was suing Marx for one hundred good American dollars which he alleged he had loaned the latter but had been unable to collect as per agreement. The plaintiff had told at length how they had been friends for twenty-five years; how his former friend had come to him with a tale of temporary financial embarrassment, and out of the kindness of his heart he had handed him the hundred, but which now, contrary to good fellowship and justice, he refused to return. Then it became Marx's turn and he promptly repudiated the debt; he defied Cohen to show any evidence of the indebtedness and ridiculed the idea that any one with Cohen's reputation as a close-fisted business man would hand out one hundred dollars without receiving legal evidence of the indebtedness.

The judge could only dismiss the complaint, and the two parties at law departed from the court room. Shortly, however, they were seen in close conversation in one of the corridors, and the following dialogue took place:

Cohen: "Not that I should care for the hundred dollars, but to think that you are such a liar."

Marx: "Well, you know I got the money ain't it? And I know it. What's the use of telling a lot of people in a court room?"

CUTTING REMARKS

A janitor in an up-town apartment house had for a long time been at war with the driver of a milk wagon, who owing to the practice of making deliveries very early in the morning, had disturbed the janitor's slumbers. The feud had arrived at a stage where physical argument might be expected when one morning the janitor, when he stuck his head out of the door of his domicile, was promptly crowned with a bottle of Grade B, and it required the services of a surgeon to put him in presentable shape. The case got into a magistrate's court in a few days, and several tenants were called as witnesses as to the bad blood between the czar of the house and the distributer of lacteals. The janitor exhibited his damaged head, and the surgeon testified to his narrow escape from a fractured skull. Then one of the tenants gave his evidence to the effect that the bottle was full of milk. The attorney for the defendant loudly proclaimed, "It cuts no ice whether it was full or empty,"

and the witness came back with, "Yes; but it cut his head."

A pained expression came over the judge's face. "Young man," said he, "don't you get off any more gags of that kind in this court."

AVERTING AN EXPLOSION IN COURT

The attorneys were crowding the court room during the calling of the calendar. The usual string of "Not ready's" had been reported and sundry postponements or admonitions given out by the judge when the case of The Ignition Specialty Company against Jones was announced. The Ignition Company, dealers in automobile specialties, had a little bill of $1,500 against Jones for goods alleged to have been sold to him, but which amount, for various reasons the latter thought he should not pay. A stocky man jumped up and shouted, "Ready for Ignition," while a lanky, red-headed man announced himself as for the defense. "Your name, sir?" queries the clerk. "Sparks—J. C. Sparks," he answered.

The judge fairly jumped in his chair, and with a smile playing upon his face, remarked: "Ignition! Sparks! You two gentlemen had better not get too close while you are in the court room."

DIVERS' REASONS

A case was tried in one of the New York courts for breach of contract. The contractor had agreed to perform certain work in connection with the removal of the wreck of the *Granite State,* which burned at one of the city docks. His work had not been done within the prescribed time; hence the suit.

The defense of the contractor was a common one, but its application was exceedingly novel, and it is doubtful if such a plea has ever before been introduced in the courts. The contract contained the usual provisions that the contractor should not be held responsible for delays occasioned by God or the elements, and in support of placing the blame upon the elements he testified that he had employed for the work professional divers; that his employees had worked faithfully as long as the weather was pleasant, but that a rainy spell had come along and the divers had refused to work in the rain.

THE MAGIC OF THE LAW

The case of The Coaxem Credit Company against Ellen Clancy was called for trial in one of the municipal courts. Mrs. Clancy was visibly perturbed. "The case can't go on, Your Honor," she said. "Me lawyer ain't showed up."

"Do you owe the money?" asked the judge.

"Sure," said Mrs. Clancy, with never a doubt indicated by her prompt and positive response.

"Then why do you want a lawyer?" asked His Honor.

"If I had a good lawyer," said Mrs. Clancy, "maybe he could prove that I didn't owe it."

And the art of the efficient counsellor was once more prominently brought to the attention of the people.

BALE 'IM

No book on jury matters would be complete without what is known as "The father of jury stories."

A case had been on trial for several days and fairly early in the morning session, after a large amount of convincing evidence and a masterly charge on the part of His Honor, the jury had retired. It soon developed that most of the members were agreed upon a verdict and after a few votes a count showed 11 to 1. It was a warm, sticky spring day, one of the kind that makes even a comfortable, airy room oppressive, and the eleven had singly and collectively undertaken to convince their brother juryman that he had not taken into consideration all of the evidence. He listened patiently for a while, then sulked and finally remarked that he would stick out until "hell froze over."

So the day dragged on, the united eleven not hesitating to inform their disagreeing brother that he had the mind of a sheep and the intellect of a caterpillar. The judge had informed the twelve that he

would not consider a disagreement, but that they would be locked up for the night if necessary. At 6 P. M. one of the attendants opened the door and asked the wilting foreman if the jury would not like to have their dinners sent in.

"Yes," he responded; "send in eleven dinners and a bale of hay."

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